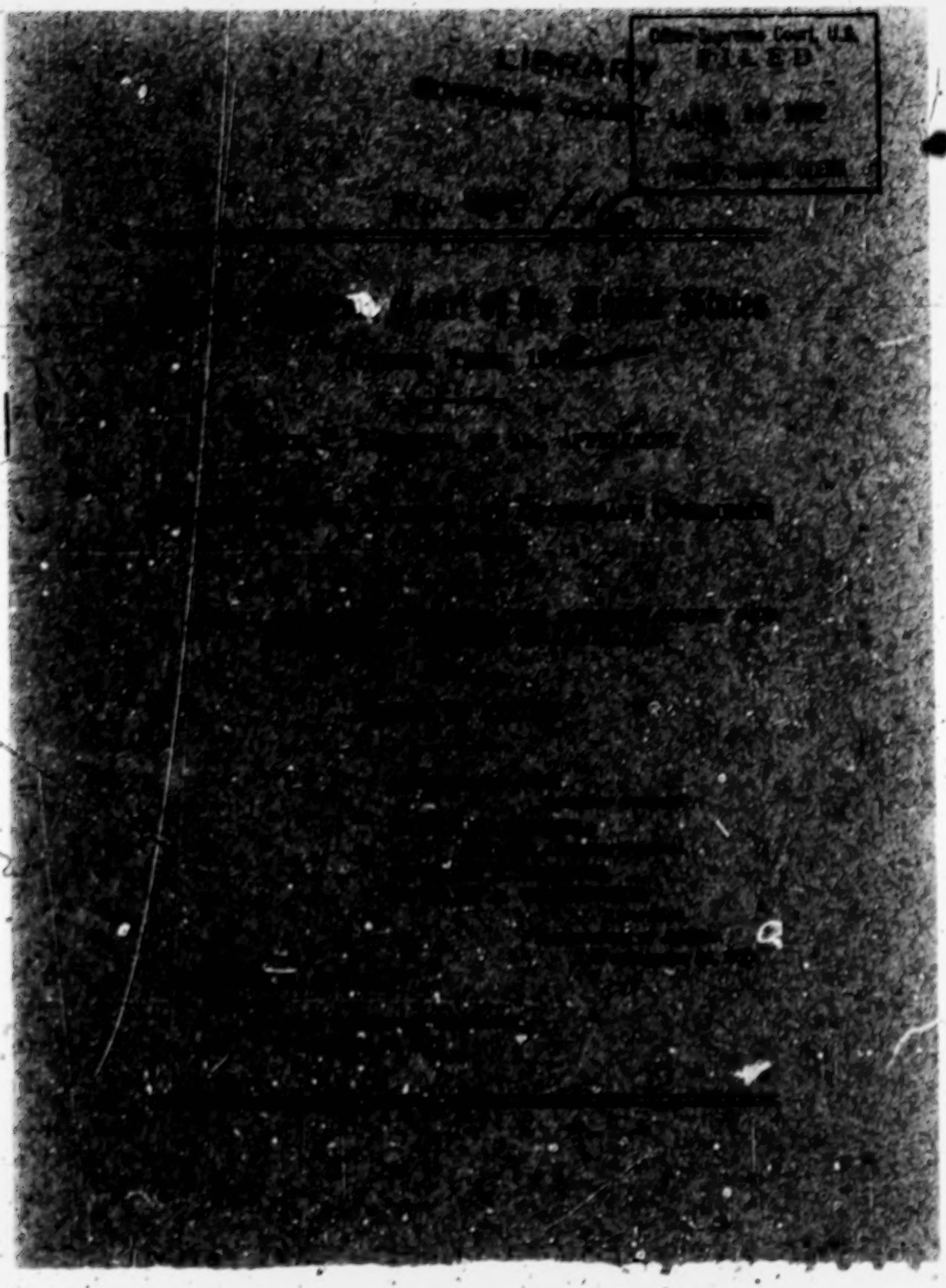
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In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 967

ALBIN P. LASSITER, ET AL., APPELLANT

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA

MOTION TO AFFIRM

Pursuant to paragraph 1(c) of Rule 16 of the Revised Rules of this Court, the United States of America and the Interstate Commerce Commission move that the judgment of the district court be affirmed.

QUESTIONS PRESENTED

1. Whether the three-judge district court correctly held that the Attorney General had standing to bring these suits in the name of the United States.

2. Whether Louisiana statutes requiring motor carriers to post signs in terminals indicating different facilities for Negro and white passengers violated the Fourteenth Amendment.

3. Whether the court correctly held that the Louisiana transportation segregation statutes involved impose an undue burden on interstate commerce.

4. Whether the Interstate Commerce Commission's regulations prohibiting discrimination by motor carriers in any terminal used in interstate commerce, and the Commission's interpretation of those regulations, violate the Interstate Commerce Act.

5. Whether the Louisiana Public Service Commission was required to be joined as an indispensable party.

STATEMENT

This is a direct appeal from a final judgment of a three-judge district court in the Western District of Louisiana convened pursuant to 28 U.S.C. 2281. In three actions (*United States* v. *Lassiter, United States* v. *Madden,* and *United States* v. *Pharis*), which were consolidated in the district court, the United States and the Interstate Commerce Commission sued to enjoin bus and railroad officials and state officers from enforcing racial discrimination in bus and railroad terminals used in interstate commerce on the ground that this constituted unlawful interference with interstate commerce in violation of Section 8, Article I of the Constitution of the United States, the Interstate Commerce Act, and the regulations of the Interstate Commerce Commission adopted thereunder. Insofar as the actions were against state officials the plaintiffs also relied on the Fourteenth Amendment. In the *Pharis* case, the United States and the Interstate Commerce Commission also sought enforcement of an order of the Interstate Commerce Commission.

Since these cases are similar, we will recite the facts in only the *Pharis* case in detail, noting whatever slight variations exist in the *Madden* and *Lassiter* cases.

1. *The Bus Terminal.*—Prior to November 1, 1961, Continental Southern Lines, Inc. and H. Paul Miller, the manager of the Continental bus terminal in Alexandria, Louisiana,[1] maintained a sign on the exterior wall above one entrance of the Alexandria bus terminal reading "WHITE WAITING, INTRASTATE PASSENGERS" and two signs, one over the outside of each of the two doors to the rear of the terminal waiting room, reading "WAITING, INTERSTATE PASSENGERS AND COLORED INTRASTATE PASSENGERS." Continental and H. Paul Miller also maintained, prior to November 1, 1961, separate toilet facilities in the terminal for white and colored passengers and posted signs over the facilities designating for which race they were maintained. These actions were specifically required by 45 La. Rev. Stat. (1961 Cum. Supp.) 1301–1305.

On September 22, 1961, acting pursuant to Part II of the Interstate Commerce Act, the Interstate Commerce Commission issued regulations which, *inter alia*, prohibit any motor carrier subject to Section 216 of the Interstate Commerce Act from using any terminal facilities in the operation of vehicles in interstate commerce, "which are so operated, arranged, or maintained as to involve any separation of any portion thereof, or in the use thereof on the basis of race, color, creed, or national origin." "Separation," within the meaning of the regulation, is defined to include the display of any sign indicating that any portion

[1] The *Madden* and *Lassiter* cases involved racial segregation in bus terminals of Continental Southern Lines located in Ruston and Monroe, Louisiana, respectively.

of the terminal facilities is restricted on a racial or religious basis. This regulation became effective on November 1, 1961.[2]

On October 31, 1961, Continental, in compliance with the regulations of the Interstate Commerce Commission, removed the signs described above and posted the required public notice setting forth the full text of the regulations.

On November 3, 1961, acting under 45 La. Rev. Stat. 1301–1305, the District Court for the Ninth Judicial District of Louisiana, upon petition of F. Jean Pharis, District Attorney for the Ninth Judicial District, issued a temporary restraining order against Continental, Morgan W. Walker (president of Continental), R. W. McClendon (vice-president and general manager of Continental), and Miller enjoining them from violating 45 La. Rev. Stat. 1301–1303 and ordering them to replace the racial signs at the bus terminal. On November 3, 1961, Continental, in compliance with the order of the Louisiana court, replaced the racial signs in the bus terminal.

2. *The Railroad Terminal.*—Prior to November 6, 1961, the Kansas City Southern Railway Company

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[2] The rule-making proceeding which resulted in the nondiscrimination regulations was instituted by the Commission following a petition filed by the Attorney General. The Commission's decision and regulation are reported at 86 M.C.C. 743 and are reprinted in the Appendix to the Motion to Affirm in *Georgia* v. *United States*, No. 963, this Term, pp. 11–33. The regulations are codified as 49 C.F.R. 180a and are published in the Federal Register at 26 Fed. Reg. 9166.

The history of these regulations is described in greater detail in the Motion to Affirm in *Georgia* v. *United States*, *supra*, pp. 2–4.

and Louisiana & Arkansas Railway Company[2] maintained at the railroad terminal in Alexandria signs similar to those maintained at the Continental bus terminal in Alexandria, and also maintained separate toilet facilities for Negroes and whites. This practice was followed despite the decision of the Interstate Commerce Commission in *National Association for the Advancement of Colored People v. St. Louis-San Francisco Railway Company*, 297 I.C.C. 335. In that case, the Commission, on November 7, 1955, made a finding that certain practices of various railroads, including Kansas City Southern, "in assigning or directing Negro interstate passengers to coaches or portions of coaches designated or provided for the exclusive use of such passengers, and in maintaining waiting rooms in their stations designated for the exclusive use of such passengers, subject Negro passengers to undue and unreasonable prejudice and disadvantage, in violation of section 3(1) of the [Interstate Commerce] Act." 297 I.C.C. at 347–348. The Commission, on the same day, entered an order requiring Kansas City Southern to cease and desist before January 10, 1956, from practicing the undue and unreasonable prejudice and disadvantage which the Commission had found to exist. Prior to January 10, 1956, Kansas City Southern was served with a copy of the Commission's order of November 7, 1955.

On November 6, 1961, all racial signs were removed from the premises of the railroad terminal and the separation of toilet facilities by race at the railroad

[2] The Louisiana & Arkansas Railway Company is a wholly owned subsidiary of Kansas City Southern.

terminal was discontinued. On November 10, 1961, acting under 45 La. Rev. Stat. 1301–1305, the District Court for the Ninth Judicial District of Louisiana, upon petition of F. Jean Pharis, issued a temporary restraining order against the Kansas City Southern and Louisiana & Arkansas Railway Company enjoining them from violating 45 La. Rev. Stat. 1301–1305 and ordering them to replace the racial signs at the railroad terminal. On November 11, 1961, Kansas City Southern and Louisiana & Arkansas, in compliance with the order of the Louisiana court, replaced the racial signs in the railroad terminal.

3. *The complaint.*—In order to eliminate unlawful racial discrimination in the Alexandria bus and rail terminals, the United States and the Interstate Commerce Commission filed a complaint on November 22, 1961, in the United States District Court for the Western District of Louisiana seeking declaratory and injunctive relief against District Attorney Pharis, Walter M. Hunter, District Judge of the Ninth Judicial District of Louisiana, Kansas City Southern Railway Company, Louisiana & Arkansas Railway Company, Continental Southern Lines, Inc., Walker, McClendon, and Miller.[4] The complaint requested that

[4] In *Lassiter* the defendants were Albin P. Lassiter, District Attorney of the Fourth Judicial District of Louisiana, Mack E. Barham, District Judge of the Fourth Judicial District of Louisiana, Continental Southern Lines, Inc., and Ernest Hall (the manager of the Continental bus terminal in Monroe, Louisiana). In *Madden*, the defendants were Ragan D. Madden, District Attorney of the Third Judicial District of the State of Louisiana, J. R. Dawkins, District Judge of the Third Judicial District of Louisiana, Continental Southern Lines, Inc.,

the court: (a) declare 45 La. Rev. Stat. 1301–1303 unconstitutional; (b) enjoin Walter M. Hunter and F. Jean Pharis from proceeding further in the actions, and from enforcing any order against Kansas City Southern, Louisiana & Arkansas, Continental Southern, Walker, McClendon, and Miller and from otherwise enforcing or implementing 45 La. Rev. Stat. 1301–1303; (c) enjoin Kansas City Southern, Louisiana & Arkansas, Continental Southern, Walker, McClendon, and Miller from placing or maintaining in or near the terminals operated by them in Alexandria, Louisiana, any signs indicating that any terminal facilities are for the use of persons of any particular race or color; (d) enjoin all the defendants from maintaining or requiring the maintenance of separate facilities in the terminal for Negroes and whites. On January 25, 1962, the district court, having heard argument and testimony, issued its findings of fact, conclusions of law and decree (203 F. Supp. 20; J.S., App. A). The court declared 45 La. Rev. Stat. 1301–1305 to be unconstitutional and granted injunctive relief against the defendants substantially in accord with that prayed for in the complaint. Only District Attorneys Pharis, Albin P. Lassiter, and Roger Madden have appealed to this Court.

ARGUMENT

1. The Attorney General clearly had standing, on behalf of the United States, to bring these actions.[5]

Walker, McClendon, and O. F. Nealy, the last three being employees of Continental.

[5] In *Bailey* v. *Patterson*, 369 U.S. 31, and *Turner* v. *City of Memphis*, 369 U.S. 350, this Court held that a three-judge court

Section 2322 of Title 28 U.S.C. provides that all actions to enforce Interstate Commerce Commission orders "shall be brought by or against the United States." Similarly, 49 U.S.C. 16(12) provides that the United States, "by its Attorney General," may apply to any district court for the enforcement of Commission orders. Insofar as the *Pharis* case was against Kansas City Southern, Louisiana & Arkansas, and their officials, it is an action to enforce a Commission order, *i.e.*, the order in *N.A.A.C.P. v. St. Louis-San Francisco Railway Company*, 297 I.C.C. 335, prohibiting segregation of these railroads' waiting rooms. Under principles similarr to aiding and abetting in criminal law (cf. 18 U.S.C. 2), Section 2322 allows suits not only

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need not be convened under 28 U.S.C. 2281 where the constitutional issues are "settled beyond question." Consequently, when a three-judge court has erroneously been convened, appeal is to the court of appeals rather than to this Court just as if a single judge had heard the case. *Turner* v. *City of Memphis*, *supra*, 369 U.S. at 353. As we will show below (p. 11), the unconstitutionality of the Louisiana statutes was settled beyond question by this Court's decisions in *Bailey* and *Turner*.

Nonetheless, this Court has jurisdiction of this appeal, unlike in *Bailey* and *Turner*, because this cause was brought by the United States, not by private parties. The matter is appealable directly to this Court under 49 U.S.C. 45, the Expediting Act, which provides that "[i]n every civil action brought in any district court of the United States under * * * chapters 1, 8, 12, 13 and 19 of this title * * * wherein the United States is complainant, an appeal from the final judgment of the district court will lie only to the Supreme Court." Since these actions were brought under 49 U.S.C. 16(12) and 322(b) (J. S. App. A. 19), which are a part of chapters 1 and 8 of Title 49, respectively, this Court clearly has jurisdiction.

It does not matter that these cases were heard by a court

against the carriers and their officials, but also against persons, like the appellants, who caused them to violate the Commission order.

Section 322(b) of 49 U.S.C. provides that if any motor carrier operates in violation of any provision of the Interstate Commerce Act or of any regulation issued thereunder, the Commission "or its duly authorized agent" may apply to a district court of the United States for enforcement of the regulation. Again, the power to enforce the substantive provisions of the Section must be read to authorize relief against those who seek to cause the carriers to violate it. See *S.E.C.* v. *Timetrust, Inc.*, 28 F. Supp. 34 (N.D. Cal.). Inasmuch as the Commission appointed the Attorney General as its duly authorized agent under Section 322(b), the Attorney General had clear standing to bring these actions.

The Elkins Act, 49 U.S.C. 42, 43, also confers specific statutory standing on the Attorney General with respect to both bus and railroad terminals. Under Section 43, whenever there is reasonable ground for

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of three judge convened prior to the decision in *Bailey*), since each of them adopted the court's findings, conclusions, and orders as his own. 203 F. Supp. 20, 21. Accordingly, the decision of the district court may be deemed that of a single judge. See *Public Service Commission* v. *Brashear Lines*, 312 U.S. 621, 626; *Healy* v. *Ratta*, 67 F. 2d 554 (C.A. 1); *Cannonball Transportation Co.* v. *American Stages*, 53 F. 2d 1050 (S.D. Ohio); *Nelson* v. *Jessup*, 134 F. Supp. 218 (S.D. Ind.).

the belief that a common carrier is engaging in discrimination forbidden by law, suit may be brought on the direction of the Attorney General, with or without a request from the Interstate Commerce Commission. This Section also provides that persons (other than carriers) may be made parties as the court may deem necessary. Likewise, Section 42 provides that in any proceeding for the enforcement of statutes relating to interstate commerce it shall be lawful to include as parties, in addition to the carrier, all persons interested in, or affected by, the practice under consideration and that orders and decrees may be made with reference to such additional parties to the same extent as are authorized with respect to the carriers.[6]

Even in the absence of statutory authorization, the Attorney General may obtain equitable relief, particularly where there has been an interference with the constitutional rights of American citizens, against unlawful interference with interstate commerce (*In re Debs*, 158 U.S. 564; *United States* v. *U.S. Klans, Knights of Ku Klux Klan, Inc.*, 194 F. Supp. 897 (M.D. Ala.); *United States* v. *City of Montgomery*, 201 F. Supp. 590 (M.D. Ala.)) or deliberate violation of the orders and regulations of the Interstate Commerce Commission (*United States* v. *Mayor and Selectmen of McComb City*, C.A. No. 3215, S.D. Miss., November 22, 1961). Cf. *United*

[6] The purpose of Section 42 is to render I.C.C. enforcement more effective. H. Rep. No. 3765, 57th Cong., 2d Sess., p. 6 (1903). Parties have been enjoined under Section 42 from continuing practices which caused the carrier to violate, or prevented it from complying with the Act. See, *e.g.*, *United States* v. *Baltimore & Ohio Railroad*, 333 U.S. 169, 171–172, note 2; *R. & C. Truck Leasing, Inc.* v. *I.C.C.*, 283 F. 2d 163 (C.A. 10).

States v. *San Jacinto Tin Co.*, 125 U.S. 273; *Sanitary District* v. *United States*, 266 U.S. 405; *United States* v. *California*, 332 U.S. 19; *United States* v. *Republic Steel Corp.*, 362 U.S. 482. Here the complaints alleged that the defendants had both interfered with interstate commerce and disobeyed the Commission's order and regulations.

2. Appellants contend (J.S. 5–8) that the Commission's regulations governing discrimination by interstate motor carriers, as interpreted by the Commission and the court below, violate the Interstate Commerce Act by improperly regulating intrastate commerce. They reason that the Commission had no authority to prohibit segregation in portions of terminals used for intrastate passengers even though other portions of the same terminals were used by interstate passengers.

a. Regardless of the validity of the Commission's regulations, the decision of the district court must be sustained. First, the district court correctly held (J.S. App. A, 21) that 45 La. Rev. Stat. 1301–1305 plainly violates the Fourteenth Amendment. As this Court declared in *Bailey* v. *Patterson*, 369 U.S. 31, 33: "We have settled beyond question that no State may require racial segregation of interstate or intrastate transportation facilities." See also *Turner* v. *City of Memphis*, 369 U.S. 350. Since the only appellants here are state officials attempting to enforce racial segregation under the Louisiana Statute, *Bailey* and *Turner* control this case.

Secondly, the court below concluded that 43 La. Rev.

Stat. 1301–1305 imposed an undue burden on interstate commerce in violation of Article 1, Section 8, of the Constitution (J.S. App. A, 21). This holding was also correct. These Louisiana statutes apply to *all* common carriers and travellers, interstate as well as intrastate. They have the effect of requiring interstate carriers, like those involved in these cases, either to partition or separate their terminal facilities or to construct separate terminal facilities for intrastate and interstate commerce. If the carriers do not go to this expense, interstate passengers will be required to use segregated facilities. Statutes imposing such burdens on interstate carriers and passengers plainly interfere with interstate commerce and are unconstitutional on their face. See *Morgan* v. *Virginia*, 328 U.S. 373; *Henderson* v. *United States*, 339 U.S. 816; *Boynton* v. *Virginia*, 364 U.S. 454; *Matthews* v. *Southern Railway System*, 157 F. 2d 609 (C.A. D.C.); cf. *Whiteside* v. *Southern Bus Lines*, 177 F. 2d 949 (C.A. 6); *Chance* v. *Lambeth*, 186 F. 2d 879 (C.A. 4).

b. In any event, the Commission's regulations, and their application in these cases, are consistent with the provisions of the Interstate Commerce Act. *Lewis* v. *Greyhound Corp.*, 199 F. Supp. 210 (M.D. Ala.); *United States* v. *Mayor and Selectmen of McComb City*, *supra*; *United States* v. *Fraiser*, C.A. No. G–C–27–61 (N.D. Miss.). Section 203(a)(19) of the Act expressly extends the Commission's jurisdiction to all vehicles and facilities of motor common

carriers operating in interstate commerce.* See *Boynton* v. *Virginia*, 364 U.S. 454, 459–460. Thus, the Commission's jurisdiction to prohibit discrimination under Section 216 includes all vehicles and terminals used by motor carriers in interstate commerce. When the same carriers' vehicles and terminals are used in both interstate and intrastate commerce, the Commission retains authority over them. See *Southern Ry. Co.* v. *United States*, 222 U.S. 20, 27; *Baltimore & Ohio R.R.* v. *Interstate Commerce Commission*, 221 U.S. 612; *Morris* v. *McComb*, 332 U.S. 422.

Contrary to appellants' contention, the regulations of the Commission, both in terms and as applied here, regulate only interstate commerce. They prohibit any "motor common carrier of passengers subject to section 216 of the Interstate Commerce Act" from utilizing terminal facilities "in the operation of motor vehicles in interstate or foreign commerce" which maintain "any separation of any portion thereof, or in the use thereof, on the basis of race, color, creed, or national origin." 86 M.C.C. 743, 754, 755. Thus, the

* Section 203(a)(19) of the Act, 49 U.S.C. 303(a)(19), provides: "The 'services' and 'transportation' to which this part applies include all vehicles operated by, for, or in the interest of any motor carrier irrespective of ownership or of contract, express or implied, together with all facilities and property operated or controlled by any such carrier or carriers and used in the transportation of passengers or property in interstate or foreign commerce or in the performance of any service in connection therewith."

Commission's regulations were intended, and were applied here, to prevent segregation of any part of a terminal when the terminal was used in interstate commerce.

The Commission has power under the Act to regulate—hence to prohibit discrimination—throughout an interstate facility, even though the carrier has designated part of it as an intrastate facility. This is particularly true when, as we have seen (p. 12), the discrimination in the so-called intrastate portion of the terminal results in placing a burden on interstate carriers and discriminates against interstate passengers. The indirect effect of the regulations on intrastate commerce, resulting from the mixing of intrastate and interstate commerce in the same terminal, does not take away from the fact that the Commission is engaged in regulating interstate commerce within the scope of its authority under the Act. For a fuller discussion of a similar contention, see our Motion to Affirm in *Georgia* v. *United States, supra*, pp. 5–10.[9]

3. Appellants contend (J.S. 8) that the Louisiana Public Service Commission is an indispensable party since it has adopted a resolution requiring a greater degree of racial segregation than the statutes declared

[9] Appellants also argue (J.S. 8) that the Commission's regulations "repeal and re-enact in different form a controlling portion of Part II the I.C.C. Act, namely, 49 U.S.C. 316(e) * * *." That section provides that "nothing in [the Interstate Commerce Act] shall empower the Commission to prescribe, or in any manner regulate, the rate, fare, or charge for intrastate

unconstitutional by the district court.[10] According to appellants, the district court, by failing to require the joinder of the Louisiana Public Service Commission, "has left [the validity of the Commission's resolution] unsettled as the railroad companies and bus companies in the State of Louisiana operate under a franchise from the Louisiana Public Service insofar as intrastate travel is concerned" (J.S. 9). But no question has been left in doubt, for a State cannot require segregation of either interstate or intrastate transportation.

This Court has held that the "indispensability of parties is determined on practical considerations" (*Shaughnessy* v. *Pedreiro*, 349 U.S. 48, 54), and that the "determination of the question of indispensability of parties is dependent, not on the nature of the decision attacked, but on the ability and authority of the defendant before the court to effectuate the relief which the [plaintiff] seeks" (*Ceballos* v. *Shaughnessy*, 352 U.S. 599, 603). In short, "the test of indispensability is whether the absent party's interest

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transportation, or for any service connected therewith, for the purpose of removing discrimination against interstate commerce or for any other purpose whatever." Since this proviso is in terms limited to the "rate, fare, or charge" for intrastate transportation, it has no relevance here.

[10] The resolution of the Louisiana Public Service Commission requires racial segregation on carriers as well as in terminal facilities (see J.S. App. C, p. 29).

in the subject matter of the litigation is such that no decree can be entered in the case which will do justice between the parties actually before the court without injuriously affecting the rights of the absent party." *Lawrence* v. *Sun Oil Co.*, 166 F. 2d 466, 469 (C.A. 5). See also *Shields* v. *Barrow*, 17 How. 129, 139; *Chance* v. *Buxton*, 170 F. 2d 187, 188 (C.A. 5); *Gauss* v. *Kirk*, 198 F. 2d 83 (C.A. D.C.). The Louisiana Public Service Commission was not required to be a defendant in order to effectuate the relief sought by the plaintiffs, nor has the failure to join the Commission in any way affected its rights. All that the plaintiffs sought in this case was to enjoin the illegal acts of the defendant carriers and law enforcement officers and to have 45 La. Rev. Stat. 1301–1305 declared unconstitutional. That is precisely what the decree does.

CONCLUSION

For the foregoing reasons, we respectfully submit that the judgment of the district court should be affirmed.

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